

# INSURANCE

**Dave Heineman**  
*Governor*

**L. Tim Wagner**  
*Director*

## ***Department of Insurance Bill Signed by Governor Heineman***

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On March 9, 2005, Governor Heineman signed LB 119 which was introduced by the Banking, Commerce, and Insurance Committee of the Nebraska Legislature. Introduced on behalf of the Nebraska Department of Insurance, LB 119 includes several miscellaneous provisions with significant impact on Nebraska's insurance community.

Under the bill Nebraska adopts the Interstate Insurance Product Regulation Compact. The compact will be made up of insurance departments of all the adopting states and will adopt and apply uniform standards to life, annuity, disability, and long-term care policy forms and advertisement as well as long-term care and disability premium rates. Additional product lines will be added later. The compact allows Nebraska to opt out of a particular uniform standard via statute or regulation if the uniform standard does not provide reasonable protection to the citizens of Nebraska. The compact allows a company to submit a filing to the Commission or to file it directly to the Department with the Nebraska statutes being applied in the latter situation. The compact will become effective after 26 states or states comprising 40% of the premium volume for the product lines involved have joined.

In addition, significant changes to the process under which the Department regulates property and casualty insurance rates for policies sold to personal lines consumers, such as homeowners and automobile insurance, are included in LB 119. The process changed from "prior approval," under which rates cannot be charged until after they are approved, to a "file and use" process under which rates can be charged as soon as they are filed with the Department. That is, the Department's review of such rates will often not occur until after they are already in effect for a period of time. With a "file and use" process, the Department

has the ability to disapprove or require subsequent modification of a rate if it is determined to be a problem, but the disapproval or modification would not apply to business that had already been written prior to the Department's finding of a problem.

LB 119 also provides for filing of farm and ranch lines rates and forms on a "file and use" basis. Workers' compensation rates will be on a "file and use" basis, although workers' compensation forms will remain subject to "prior approval."

For insurance subject to file and use filing, the existing statutory authority allowing insurers to increase or decrease premiums on individual risks up to 40% for commercial lines will not extend to personal lines risks and farm and ranch risks, but is extended to workers' compensation. We expect that the combination of "file and use" and the ability to modify rates up or down 40% will allow insurers to compete for employers with good safety practices and desirable loss histories, while still being able to offer coverage to other employers with more difficult exposures.

Nebraska has made changes to the investment standards of the insurance code as well. Nebraska domiciled insurers now have the same ability to engage in real estate lending as insurers that are domiciled in some of the other states. Nebraska has increased the permitted loan to value ratio for insurers investing in mortgages from 75% to 80% and insurers are allowed to carry second mortgages. LB 119 has included statutory standards for investment in "mezzanine" real estate loans, and added replication transactions to the hedging and income-generation derivative transactions currently permitted under law.

Other portions of LB 119 grant Nebraska domiciled mutual holding companies clearer authority to acquire stock companies and merge with other mutual holding companies. In order to allow the Department to more easily demonstrate Nebraska's compliance with the standards set by the National Association of Insurance Commissioners, LB 119 recodifies the credit for reinsurance statutes. New standards allow insurers to use brokers/dealers to hold securities owned by domestic insurance companies.

Language was added to explicitly establish the authority of an insurer to guaranty the value of assets held in separate accounts. In addition, LB 119 adopted a new subsection to clarify the director's authority as receiver under the Supervision, Rehabilitation, and Liquidation Act to sell the licenses held by an insolvent insurer to maximize the value of the insurer's assets in the event of insolvency.

LB 119 includes a number of housekeeping provisions. For example, the bill makes several changes to the Burial Pre-Need Act, granting the director authority to fine and suspend licensees, and doubling the fees paid by licensees so that other licensees do not so heavily subsidize these costs. The current Nebraska mandate is brought into compliance with the federal Women's Health and Cancer Rights Act of 1998 by specifying that this provision applies to individual plans, and specific types of insurance are explicitly relieved from compliance as allowed by federal law. The bill repeals the Surplus Lines Act requirement that licensees maintain an office in this state to conform the statute to legislation passed in 2002. Nebraska law now applies to certificates issued by out-of-state benefit trusts domiciled in states that specify their insurance laws do not apply to out-of-state certificates. LB 119 has adopted the NAIC P&C Actuarial Opinion Model. LB 119 has granted the director specific rule-making authority over the workers' compensation assigned risk plan.

The full text of LB 119, as well as a full synopsis of the bill and committee amendments, is available at [www.unicam.state.ne.us](http://www.unicam.state.ne.us).

## LEGAL DIVISION

### Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1456 <b>United Healthcare Insurance Company</b> Hartford, CT	Violated <u>Neb. Rev. Stat.</u> §§44-1539, 44-1540(1),(3),(4),(8) & (13) and Title 210 NAC Chapter 61 Sec. 008.03. Multiple violations of Unfair Claims Settlement Practices; failure to pay claim within 15 days.	Consent Order \$62,500 admin. fine 1/10/05
C-1508 <b>United Healthcare Insurance Company</b> Hartford, CT	Violated <u>Neb. Rev. Stat.</u> §§44-1539, 44-1540(1),(3),(4),(8) & (13) and Title 210 NAC Chapter 61, Sec. 008.03. Multiple violations of Unfair Claims Settlement Practices; failure to pay claim within 15 days.	Consent Order \$10,000 admin. fine 3/22/05
C-1513 <b>States General Life Insurance Company</b> Ft. Worth, TX	Violated Title 210 NAC Chapter 55, Sec. 004.06. Operating loss in the past 12 months exceeded 50% of remaining surplus as regards policyholders in excess of the minimum required.	Order Suspension of Certificate of Authority 3/1/05
C-1514 <b>Realm National Insurance Company</b> New York, NY	Violated <u>Neb. Rev. Stat.</u> §44-214. Failure to maintain minimum surplus requirements.	Order Suspension of Certificate of Authority 3/10/05
C-1515 <b>American Bonding Company</b> Scottsdale, AZ	Violated <u>Neb. Rev. Stat.</u> §§44-134 and 44-4817. Company placed in liquidation in state of domicile.	Order Revocation of Certificate of Authority 3/10/05
C-1516 <b>AF&amp;L Insurance Company</b> Warrington, PA	Violated <u>Neb. Rev. Stat.</u> §44-214. Failure to maintain minimum surplus requirements.	Order Suspension of Certificate of Authority 3/15/05
C-1520 <b>The Insurance Corporation of New York</b> Stamford, CT	Violated <u>Neb. Rev. Stat.</u> §§44-214 and 44-4809. Failure to maintain minimum surplus requirements.	Order Suspension of Certificate of Authority 4/7/05

## Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1601 <b>R.A. Rozanek &amp; Rozanek Funeral Homes, Inc.</b> Fremont, NE	Violated <u>Neb. Rev. Stat.</u> §§44-1525(11), 44-4053(2)(b) & 44-4059(1)(b) & (g). Failed to respond to Department within 15 business days; licensed business entity failed to have licensed designated producer; violated any insurance law; and unfair trade practice or unfair claims settlement practice.	Consent Order \$500 admin. fine for each producer and agency. Surrender producer and agency license within 30 days. 2/28/05
A-1605 <b>Steve F. Jansen</b> Fordyce, NE	Violated <u>Neb. Rev. Stat.</u> §§44-1525(11) and 44-4059(1)(b),(g) & (h). Failed to respond to the Department within 15 business days; violated any insurance law; unfair trade practice or unfair claims settlement practice; and demonstrated incompetence or untrustworthiness.	Order Producer license revoked 2/28/05
A-1607 <b>Richard A. Kerns</b> Omaha, NE	Violated <u>Neb. Rev. Stat.</u> §44-4028(11). Failed to demonstrate trustworthiness and competency to transact business.	Consent Order \$1,000 admin. fine 3/10/05
A-1609 <b>Paul D. Ronhovde</b> Fremont, NE	Violated <u>Neb. Rev. Stat.</u> §§44-4054(8), 44-4059(1)(b) and 44-1525(11). Failed to notify the Department of address change within 30 days; violated any insurance law; failed to respond to the Department within 15 business days.	Consent Order \$1,000 admin. fine; producer license suspended until response received 2/28/05
A-1610 <b>Mark S. Walker</b> Allen, TX	Application for Producer license denied.	Order License granted 2/28/05
A-1611 <b>Riniski McGlown</b> Omaha, NE	Application for Producer license denied.	Order License granted 3/3/05
A-1613 <b>Jeffrey J. Whitaker</b> Omaha, NE	Application for Producer license denied.	Order License granted 4/7/05

*Chapter 80, "Synthetic Guaranteed Investment Contracts Regulation" was adopted with an implementation date of April 2, 2005.*

*The implementation date for the amendments to Chapter 34, "Title Insurance", is April 3, 2005.*

*Companies are no longer required to submit a listing of their life and health insurance policy forms approved, and still in use, in Nebraska.*

*As of January 20, 2004, the Life and Health Division began accepting all life and health lines on SERFF; all forms are also included.*

## **Chapter 80 and Amended Chapter 34 Adopted**

Chapter 80, "Synthetic Guaranteed Investment Contracts Regulation" was adopted to implement Neb.Rev.Stat. §44-708.01 by setting forth the terms and conditions under which a life insurance company may issue synthetic guaranteed investment contracts. The implementation date is April 2, 2005.

Chapter 34, "Title Insurance", was amended to implement amendments to Neb.Rev.Stat. §44-19,116 by eliminating the title insurance agent CPA audit requirements. The amendments also outline specific records retention requirements for title insurance agents as allowed under Neb.Rev.Stat. §44-19,117. Implementation date of the amendments is April 3, 2005.

Copies of Chapter 80 and amended Chapter 34 can be found on the Department's web site at [www.doi.ne.gov](http://www.doi.ne.gov).

## **LIFE AND HEALTH DIVISION**

### **Listing No Longer Required to be Submitted**

The Life and Health Division is no longer requiring companies to submit a listing of their life and health insurance policy forms approved, and still in use, in Nebraska. This requirement, as published in Company Bulletin 53 dated 1981, may be ignored until CB-53 is revised and reissued.

### **Filing Method Options**

As of January 20, 2004, the Life and Health Division began accepting all life and health lines on SERFF. This includes Accident, Annuity, Credit Life, Credit Disability, Endowment, Health, Life, Long-Term Care, Medicare Select, Medicare Supplement, Variable Annuity, and Variable Life. All forms are also included: Applications, Policies, Endorsements, Riders, Amendments, Schedule Pages, Rates, Advertisements (for Long-Term Care and Medicare Supplement) for all types of credit, life and health insurance. See SERFF General Instructions for Nebraska.

*The division also accepts filings by regular mail, or by e-mail to lifehealth@doi.state.ne.us.*

*The Department will be evaluating premium and reserve adequacy of Return of Premium (ROP) benefits provided on health policies, either included as part of the base policy or provided by an attached rider.*

*Domestic insurers were asked that a signed actuarial certification attesting to the adequacy of the company's ROP reserves and ROP rates be submitted to the Department by May 1.*

*The 2005 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of loss is 4.038%.*

The division also accepts filings by regular mail. See Company Bulletin CB-53 for instructions.

Filings can be made by e-mail to [lifehealth@doi.state.ne.us](mailto:lifehealth@doi.state.ne.us). Attach, in Adobe Acrobat (PDF) format, the cover letter, Life and Health Division filing form, item to be reviewed, and supporting documentation (such as an actuarial memorandum).

### ***Return of Premium Benefits***

As part of our ongoing process of financial regulation, the Department will be evaluating premium and reserve adequacy of Return of Premium (ROP) benefits provided on health policies, either included as part of the base policy or provided by an attached rider. This includes ROP benefits sold in conjunction with long-term care, disability income, and dread disease policies. ROP benefits include benefits where a percentage of the premiums received less claims paid is returnable as a policyholder benefit. Depending on the contract, payment of the ROP benefit may be made while the policy is in force at the end of a specified duration or upon policy lapse or surrender.

Notice was sent on March 3 to all Nebraska **domestic** insurers authorized to write sickness and accident insurance asking that a signed actuarial certification attesting to the adequacy of the company's ROP reserves and ROP rates be submitted to the Department by May 1, 2005. If you have not yet responded, please mail the certification directly to Jeanne Daharsh, Actuary and Administrator of the Life and Health Division, 941 "O" Street, Suite 400, Lincoln, Nebraska 68508.

The Department of Insurance anticipates that we will be reviewing ROP reserves as part of our financial examinations. If you have any questions, you may contact Jeanne Daharsh at 402-471-4742.

### ***Interest Rate on Death Proceeds***

The 2005 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of loss is 4.038%.

Neb.Rev.Stat. §44-3,143 requires that interest be paid from the date of proof of death to the date of payment.

## CONSUMER AFFAIRS DIVISION

### ***Use of Seminars to Promote Life Insurance and Annuity Products***

*The promotional materials for some of the seminars that are held for marketing life insurance and annuity products appear to be false and/or misleading.*

The Nebraska Department of Insurance has been contacted about seminars sponsored by insurance producers. The purpose of the seminars is for marketing life insurance and annuity products. In some cases, the promotional materials for these seminars appear to be false and/or misleading. In some cases, the seminars target a senior audience.

*A provision in Chapter 50 requires insurance companies to maintain responsibility and oversight for the content, form and method of distribution of marketing materials and advertisement.*

Nebraska Administrative Rules and Regulations, Title 210, Chapter 50 sets forth comprehensive rules and guidelines for the advertisement of life and annuity products. The requirements set forth in the chapter apply to these seminars. One relevant provision requires insurance companies to maintain responsibility and oversight for the content, form and method of distribution of marketing materials and advertisement. Therefore, it is important that promotional materials for such seminars be communicated with and approved by the insurers with whom a producer is representing.

In some cases the seminar promotional materials include broad statements regarding investment opportunities. Such statements may run afoul of securities laws, as well as being a violation of insurance regulations. In addition to many other specific requirements, Chapter 50:

*Seminar promotional materials that include broad statements regarding investment opportunities may run afoul of securities laws, as well as being a violation of insurance regulations.*

- Prohibits misleading or deceptive statements,
- Prohibits use of terms such as investment, savings, profit or other terms when representing an insurance or annuity product,
- Prohibits use of the name of a product without disclosing the fact that it is an insurance product.
- Requires that the type of insurance product being advertised is clearly communicated,
- Prohibits insurance producers from using such terms as investment advisor, financial consultant, etc.
- Establishes guidelines for the use of endorsements and testimonials,
- Requires that the source of cited statistics be given and that only most current statistics be used,
- Sets forth requirements for presentation of non-guaranteed policy elements, and
- Sets forth requirements relating to introductory offers.



*All insurance producers who develop or participate in seminars intended to promote or market life insurance and annuity products are urged to carefully review and consider the provisions of Chapter 50.*

*Failure to comply with Chapter 50 can result in administrative penalties, suspension or revocation.*

*Updates are being made to the Agent/Underwriting manual, CB 50 (the filing manual), checklists, product locator and the inland marine guide.*

*The inclusion of subjective rating unnecessarily increases the amount of follow-up correspondence on otherwise satisfactory rate filings.*

Seminars can be an effective and useful marketing tool and do not run afoul of regulatory requirements when they are designed with proper disclosure and compliance in mind. All insurance producers who develop or participate in seminars intended to promote or market life insurance and annuity products are urged to carefully review and consider the provisions of Nebraska Administrative Rules and Regulations, Title 210, Chapter 50 and to seek guidance from the insurers being represented.

Producers and insurers are encouraged to report non-compliant seminar promotional materials that come to your attention. The Department will investigate complaints and adverse information relating to questionable sales seminar practices. Failure to comply with Chapter 50 is considered a violation of the Nebraska Unfair Insurance Trade Practices Act and can result in administrative penalties, suspension or revocation.

## PROPERTY & CASUALTY DIVISION

### ***Material Updated as Result of Passage of LB 119***

The Property/Casualty Division is going through its material on the website to update in view of recently passed legislation, particularly LB 119. We will make changes to the Agent/Underwriting manual, CB 50 (the filing manual), checklists, product locator and the inland marine guide. For some things, such as checklists, we will show the September date that will apply to the new file and use approach on personal lines and workers' compensation and the new  $\pm 40\%$  rating flexibility on workers' compensation. Once completed, each will be easier to follow and should again act as a beneficial resource to assist insurers in having filings in place that comply with Nebraska statutes.

We continue to receive rate filings that contain traditional forms of subjective schedule rating (e.g.,  $\pm 25\%$  flexibility based on management, location, etc.). This has not been allowed under Nebraska law since January 1, 2001. Subjective rating is based on underwriting judgment and cannot be absolutely consistent from underwriter to underwriter. Inclusion of subjective rating unnecessarily increases the amount of follow-up correspondence on otherwise satisfactory rate filings.



*Insurers are not required to file guidelines with the department for use of the 40% rating flexibility.*

*When LB 119 goes into effect late this summer, insurers will have the same  $\pm 40\%$  rating flexibility for workers' compensation.*

*If we complete a problem report and you feel it isn't clear, please don't hesitate to give us a call so that we can clarify for you.*

*On April 25, 2005, Holly Blanchard joined the staff as a market conduct examiner.*

For many lines of insurance, Nebraska law (§44-7509) already allows insurers  $\pm 40\%$  rating flexibility on an individual risk basis. The lines of insurance will increase after the implementation date of LB119. Insurers are not required to file guidelines with the department for use of the 40% rating flexibility. Additionally, underwriters are not required to document each file of the reason for using the  $\pm 40\%$  rating flexibility for regulatory compliance purposes. The old "schedule rating," rules did require the underwriter to keep a breakdown in each file of what the debit/credit was and the individual factors that went into the establishment of that debit/credit. Our current law is more simple.

Insurers should also note that, when LB 119 goes into effect late this summer, they will have the same  $\pm 40\%$  rating flexibility for workers' compensation.

### **SERFF Filings**

We continue to see more and more filings submitted through SERFF. It's a learning process for all of us – and like anything, the more one works with it, the more comfortable one becomes with it. If we complete a problem report and you feel it isn't clear, please don't hesitate to give us a call so that we can clarify for you. As a reminder, the phone numbers, e-mail addresses and lines handled for each of the Property/Casualty staff are on the web site under Property Casualty Guidelines and Information found at [www.doi.ne.gov](http://www.doi.ne.gov).

## **MARKET CONDUCT DIVISION**

### **New Personnel**

Holly Blanchard has joined the Department as a market conduct examiner effective April 25, 2005. Holly comes to the Market Conduct Division from Continental General Insurance Company.

## FRAUD DIVISION

### ***Annual Fraud Conference***

Mahoney State Park will be the site for the 5<sup>th</sup> annual insurance fraud conference hosted by the Insurance Fraud Prevention Division. This year's conference, entitled **"Detecting Deception in Behavioral, Verbal, and Written Communication"**, is scheduled for Wednesday, June 15, 2005.

The target audience for the conference is insurance company special investigation units, claims and underwriting personnel, as well as neighboring state's fraud bureaus.

The one-day program includes:

Nebraska Department of Insurance Director, Tim Wagner, introducing Lieutenant Governor Rick Sheehy, opening remarks speaker .

Steve Conlon, Assistant Director, Iowa Division of Criminal Investigation presenting "Behavior Dynamics of the White Collar Criminal."

Don Rabon, North Carolina Criminal Justice Training Manager presenting the morning topic "Detecting Deception with Emphasis on Telephone Interviews" and the afternoon will be spent exploring "Investigative Discourse Analysis."

Jeff Matza, Vice President, Special Investigations, Mutual of Omaha Companies, will cover "Life/Health Insurance Fraud."

Tom Negley, Team Manager, Special Investigative Unit, State Farm Insurance Companies covering "Property/Casualty Insurance Fraud."

This full day of training will be conducted for the nominal fee of \$30.00, which includes continental breakfast, two breaks, buffet lunch and park entry pass.

Conference brochures were emailed during the last week of March. For registration information contact the Insurance Fraud Prevention Division by email at [fraudprevention@doi.state.ne.us](mailto:fraudprevention@doi.state.ne.us) or by telephone at (402) 471-8336.



## EXAMINATION DIVISION

### ***Pre-Need Exams Completed During First Quarter, 2005***

EMM's Courts, Inc. d/b/a Shultz-Vogel-Johnson Mortuary  
Horner-Lieske-Horner Mortuary, Inc.  
McLaughlin Funeral Home  
Minnick Funeral Service, Inc.  
Munderloh Funeral Homes, Inc.  
Myers Funeral Home  
Palmer Funeral Home  
Solt Funeral Home  
Wadlow-Rozanek Colonial Chapel

### ***Financial Examinations Completed During First Quarter, 2005***

Battle Creek Mutual Insurance Company  
Cooperative Mutual Insurance Company  
Exclusive Healthcare, Inc.  
First Landmark Life Insurance Company  
Health-Dent, Inc.  
Norfolk Mutual Insurance Company  
Omaha Property and Casualty Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



## Department Calendar

- May 30: Department Closed - Memorial Day
- June 15: Annual Fraud Seminar (registration required)  
Eugene T. Mahoney State Park
- June 21: "Insurance Advice: A Nebraska Connects Special"  
Aired on NET-1 at 8:00 p.m.—a program for policyholders  
to call and ask insurance questions of Department staff
- July 4: Department Closed - Independence Day

**Note—We have a new web site: [www.doi.ne.gov](http://www.doi.ne.gov)**



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